



## *Report to the Auburn City Council*

Action Item

Agenda Item No. 7

City Manager's Approval

**To:** Honorable Mayor and City Council Members  
**From:** Robert Richardson, City Manager  
Andy Heath, Administrative Services Director  
**Date:** October 10, 2011  
**Subject:** Appeal from Result of Election on Petition to Decertify Exclusively Recognized Employee Organization for Office and Administrative Support Bargaining Unit

### *The Issue*

Shall the City Council grant the appeal by four members of the Office and Administrative Support Bargaining Unit of the tie vote that resulted from State Mediation and Conciliation Service's conduct of an election on those employees' petition to decertify the International Union of Operating Engineers, Local 39 as the exclusively recognized bargaining agent of this unit? If so, what remedy should the Council award?

### *Recommended Action*

City management recommends the City Council grant the appeal and order a new election in compliance with Article II, Section 6.0 (B) of the City's Employer Employee Relations Policy, which limits the vote to those employed by the City in the 13 positions within this bargaining unit as of 15 days before the date set for the election.

### *Discussion and Recommendation*

In early August 2011, employees in the Office and Administrative Support Bargaining Unit petitioned to decertify Local 39 as the exclusively recognized bargaining agent for the unit on the grounds that it no longer enjoyed majority support. Pursuant to an agreement between City management and Local 39, the State Mediation and Conciliation Service ("SMCS") conducted a mail-ballot election on September 19, 2011 to determine whether a majority of the employees in the unit wish to continue to be represented by Local 39. That agreement specified that the SMCS election supervisor had the duty to determine the eligibility of a voter prior to opening his or her ballot. Eligibility criteria under Section 6.0(B) of the City's Employer Employee Relations Policy ("EERP") included: (a) voters had to be employed in this unit during the payroll period ending July 31, 2011; and (b) voters must still be employed on the date they cast their ballots in the election.

Fourteen (14) votes were cast in the election and the election supervisor for the SMCS determined to allow Linda Bauer, a former City employee, to vote. However, Ms. Bauer had

been laid off permanently by the City effective July 5, 2011. As such, she did not meet the eligibility criteria to vote in the decertification election. The election agreement provides that decisions of SMCS on eligibility to vote are binding on Local 39 and the City. However, the petitioners and other employees in the bargaining unit were not parties to that agreement and are not bound by it and it appears SMCS decision to allow Ms. Bauer to vote violated those employees' rights to determine whether and by whom to be represented in their employment relations with the City. City management, of course, has no interest in this matter – whether and by whom employees are represented is a question for the employees themselves to determine in a democratic way under the Employer Employee Relations Policy.

The decertification election resulted in a seven-to-seven tie. Local 39 asserts that it cannot be displaced as the exclusively recognized employee organization except by majority vote (and therefore cannot be displaced by a tie vote). However, the appellants argue that only thirteen (13) employees met the eligibility criteria on the date of the election. The appellants further assert that 7 employees other than Ms. Bauer cast votes for “no representation,” and therefore Local 39 lacks majority support. They have provided an affidavit signed by seven employees affirming that each voted “no”. Moreover, it can be argued that even a 7-7 tie demonstrates a lack of majority support, as a majority of 14 is 8.

In a letter dated October 6<sup>th</sup>, attached to this report as Attachment F, Local 39 makes several responses to the appeal. First, they allege allowing an appeal is procedurally improper because it allows the City Council to resolve what should be a dispute internal to the bargaining unit. However, City management staff contacted the Public Employment Relations Board (PERB), which confirmed that it can not allow an appeal of this matter because the City's EERP controls, rather than PERB's rules which apply only in the absence of local rules. If the City Council refused to consider this appeal, no remedy would be available to City employees for what is alleged to be an error by SMCS depriving employees of their right to determine whether to continue to be represented by Local 39 and to continue to be subject to a duty to pay dues in support of that organization. Moreover, the City met and conferred with Local 39 and all its bargaining units last year when the EERP was adopted and no allegation was made at that time that the appeal rights provided by Section 10 of Article 2 were improper. Accordingly, management staff recommends the Council entertain the appeal.

Second, Local 39 claims that the Meyers, Miliias Brown Act prevents a recognized bargaining agent from being displaced except “by a majority vote of the employees.” This amounts to an argument that Local 39 is legally entitled to win ties. Be that as it may, the question remains whether one of the votes apparently cast to maintain Local 39 as the exclusive bargaining agent for this unit may be counted. Moreover, the City's own rules and provisions of Meyers, Miliias Brown not cited by Local 39 require an exclusive bargaining agent to demonstrate majority support which a tie vote does not do. In any event, it is not apparent that there was a valid tie vote, given that 14 votes were cast in a unit with just 13 eligible voters.

Third, Local 39 claims that Ms. Bauer was properly permitted to vote because her layoff was temporary and she remains a member of the bargaining unit. However, the layoff was not temporary. The City has eliminated all administrative assistant positions throughout the organization – Ms. Bauer's was the last to go – and has no intention of reinstating those positions. Moreover, the language of Section 6.0 of Article II states:

Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, **including those who did not work during such period because of illness, vacation or other authorized leaves of absence**, and who are employed by the City in the same Appropriate Unit on the date the election commences. EERP, Art. II, section 6.0(B) (emphasis added).

Whether or not Ms. Bauer was temporarily or permanently laid off, she did not work in the relevant pay period for reasons other than “illness, vacation or other authorized leave of absence.” A permanent (or temporary) layoff is not “an authorized leave of absence.” City management concludes Ms. Bauer was ineligible to vote but that remains an issue for resolution by the City Council after considering the testimony and other evidence submitted at the hearing. Moreover, Ms. Bauer has applied for, and will likely receive, unemployment benefits – further evidence that she does not view herself as “employed by the City” as the EERP requires.

Fourth, Local 39 urges the Council to disregard the affidavit provided by the appellants demonstrating that 7 current employees voted against Local 39’s continued representation of this unit because to do so violates the requirement that elections be secret. The ballot secrecy requirement is for the benefit of employees and they can waive that right if they choose. Accordingly, you are entitled to consider the affidavit. On the other hand, management staff do not recommend that you accept the affidavit at face value and declare the proponents of the petition to decertify Local 39 as victors (although the Council may ignore that recommendation and determine otherwise, as noted below). Rather, management staff recommends only that you determine whether Ms. Bauer was eligible to vote and, if not, whether the appropriate remedy is a new election in which secret ballots will be cast.

Fifth, Local 39 threatens to bring an unfair labor practices charge before PERB if the City Council grants the appeal. It can be expected that the appellants will bring such a charge if the City Council denies the appeal. Accordingly, management staff recommends you decide this appeal on its merits, leaving the stakeholders to whatever remedies they deem appropriate after you do so.

Lastly, Local 39 complains that the City agreed to bear the entire cost of the decertification election rather than insist Local 39 pay half. It views this concession on the City’s part as evidence that the City lacks impartiality in this matter. Management staff has two comments on this point – first, Local 39 mistakes what occurred. Local 39 flatly refused to pay its share of the election costs, leaving the City two options – pay for the election itself or allow Local 39 to unilaterally veto employee’s rights to determine whether Local 39 should continue to take their dues and exclusively represent them in the negotiations with the City. Even if the City’s decision to pay for the election could be viewed as a concession, Local 39 did not object to that concession when it was made. Second, management reiterates that the City has no dog in this fight – while we owe our employees a fair election under the law and the EERP, the outcome of that election is entirely to the fair and free choice of the affected employees. The City will honor whatever outcome may result. Finally, it is not management staff who will decide this matter, but the Council. Accordingly, any administrative decision not to challenge Local 39’s refusal to

honor its obligations under the EERP to fund half the election cost, which it might have done from dues received from its Auburn members, ought not to impair the Council's ability to be a fair and impartial arbiter of a dispute among its employees. Again, the logic of Local 39's arguments is that by refusing to fund the election it could veto it either before or after the fact. This inconsistent argumentation is not evidence of good faith and cannot be permitted to deny the appellants any remedy at all, given the City's obligations under the Meyers Milius Brown Act and its EERP. Someone must attempt to resolve this dispute and PERB has indicated it has no authority to do so.

In sum, the legal effect of a tie in a decertification election is uncertain and confidence in the result is further undermined by the SMCS's apparent error in allowing Ms. Bauer to vote. More importantly, the City's ultimate goal is to ensure that City employees may freely determine whether they should be exclusively represented, and by whom, in a fair and democratic process that complies with law and the City's Employer Employee Relations Policy. The City otherwise has no stake in the questions presented by the appeal.

Accordingly, City management recommends that you grant the appeal and order a new election limited to eligible voters. To facilitate prompt resolution of this matter, attached herein is a resolution by which you may do so. Whether to do so is, of course, for the City Council to decide after conducting the hearing.

### **Fiscal Implications**

The legal services and staff time to prepare this report resolution are budgeted. Adoption of the resolution will not have ongoing financial consequences, particularly because the EERP states that any decision by the City Council determining the substance of a dispute is final and binding.

### **Alternatives**

The Council has at least these alternatives to the recommendation action:

1. Grant the appeal, determining that 7 of 13 eligible employees voted against continued representation by Local 39, and declare this unit to be unrepresented, inviting any party to seek recognition by demonstrating majority support of current unit members.
2. Deny the appeal, determining that Local 39 is the properly recognized exclusive bargaining agent and protected from a further decertification petition for 12 months.
3. Refer the appeal to a hearing officer to prepare findings of fact and conclusions of law for your review.

Other options may occur to the Council as well and the stakeholders may suggest further alternatives in writing or orally at the hearing. On balance, staff recommends against the first two options noted here because they can be viewed to intrude too deeply into the democratic process of employee self-determination. Staff recommends against the third option noted here because the attendant expense and delay seems unwarranted.

### Attachments

Attached are relevant portions of the Employer Employee Relations Policy; the election agreement among the City, Local 39, and the State Mediation and Conciliation Service; the appeal materials submitted by the proponents of the decertification petition; my October 5, 2011 letter to the parties to this appeal informing them of your hearing, the affidavit of 7 employees affirming that they voted against continued representation by Local 39; and Local 39's October 6<sup>th</sup> letter. My October 5<sup>th</sup> letter invites the parties to submit any further materials they wish you to review by 11:00 AM on Friday, October 7, 2011 so the City Clerk's office can forward those materials to you and make them available to the public. If late-filed materials are received, the City Clerk's office will circulate those as well. Moreover, the stakeholders (and members of the public) are free to comment orally at your hearing on this appeal.

The City Attorney and I will be present to assist your discussion of this matter on October 10<sup>th</sup>. If either of us can provide further information to assist your review of this appeal in the meantime, please let us know.

Attachment A - Article II of Employer Employee Relations Policy

Attachment B - Election Agreement dated September 19, 2011

Attachment C - September 28, 2011 appeal, with attachments

Attachment D - October 5, 2011 notice of hearing

Attachment E - Affidavit of employees voting "no representation"

Attachment F - October 6, 2011 letter from Chuck Thiel, Local 39

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN  
GRANTING THE APPEAL BY OFFICE AND ADMINISTRATIVE  
SUPPORT BARGAINING UNIT EMPLOYEES WITH RESPECT TO THE  
ELECTION ON THEIR PETITION TO DECERTIFY INTERNATIONAL  
UNION OF OPERATING ENGINEERS, LOCAL 39, AND ORDERING A  
NEW ELECTION**

**WHEREAS**, the International Union of Operating Engineers, Local 39 ("Local 39") is the recognized employee organization for the Office and Administrative Support bargaining unit; and

**WHEREAS**, in early September 2011, four employees ("the proponents") in the Office and Administrative Support Bargaining Unit ("the bargaining unit") petitioned for an election to decertify Local 39 on the grounds that it no longer enjoyed majority support from the employees in the bargaining unit; and

**WHEREAS**, the State Mediation and Conciliation Service ("SMCS") facilitated an election on September 19, 2011 to determine whether City employees desired to continue to be represented by Local 39; and

**WHEREAS**, the result of the September 19, 2011 election was a seven to seven tie; and

**WHEREAS**, on September 28, 2011, the proponents appealed the election result, questioning the seven-to-seven result on the basis that only thirteen (13) employees met the eligibility criteria to vote in the election and arguing the tie vote demonstrated a lack of majority support for Local 39's continuation as the recognized employee organization for this bargaining unit ("the appeal") and provides an affidavit of seven employees affirming that they voted "no" and Linda Bauer is not among them; and

**WHEREAS**, the election supervisor from the SMCS allowed a former employee, Linda Bauer, to vote in the September 19, 2011 election despite the fact that Ms. Bauer was not employed by the City on the record date by which eligibility to vote was required to be established; and

**WHEREAS**, Local 39 contends that it can only be displaced as the exclusively recognized employee organization by majority vote, that City Council resolution of the appeal is improper, that Ms. Bauer's vote was proper because her layoff was only temporary; and that the affidavit showing how seven employees voted may not be considered without violating election secrecy and complains that the City funded the September 19<sup>th</sup> election without requiring Local 39 to pay its share of that cost, as the City's Employer-Employee Relations Policy (EERP) requires; and

**WHEREAS**, the City Council has the authority under the EERP to consider and finally resolve appeals of determinations regarding decertification petitions; and

**WHEREAS**, the City has an interest in ensuring its employees remain free to decide for themselves whether to be exclusively represented by a recognized employee organization, and by whom, and believes that the best resolution to further this goal is to order a new election;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines that each of the findings set forth above is true and correct.

**SECTION 2.** The City Council declines to accept the employees' affidavit as a substitute for an election. Requiring a new election, in which secret ballots may be cast, will serve the intent of the EERP, protect ballot secrecy, and allow employees to express their preferences freely without actual or perceived coercion by City management, Local 39, or other employees.

**SECTION 3.** Still further, the City Council resolves Local 39's claims for as follows:

- A. Section 10 of Article II of the EERP authorizes the City Council to resolve this appeal and Local 39 was consulted before the EERP was adopted and expressed no disagreement with that Section prior to its arguments in this appeal. Moreover, City management staff contacted the Public Employment Relations Board (PERB), which reports that it can not consider an appeal of this matter because the City's EERP controls, rather than PERB's rules which apply only in the absence of local rules. If the City Council refused to consider this appeal, no remedy would be available to City employees for what is alleged to be an error by SMCS that has deprived employees of their right to determine whether to continue to be represented by Local 39 and to continue to be subject to a duty to pay dues in support of that organization.
- B. The parties cite conflicting legal authorities on the question whether Local 39 is entitled to win tie votes in decertification elections. The City Council declines to determine this question, finding that the tie vote resulted from an erroneous decision to allow 14 votes in a unit with 13 eligible voters. A new election is unlikely to result in a tie and therefore this issue need not be resolved to treat both sides of this dispute fairly.
- C. The City Council is unpersuaded by Local 39's claim Ms. Bauer was properly permitted to vote because her layoff was temporary and she remains a member of the bargaining unit. The layoff was permanent. For financial reasons and reasons of operational efficiency, the City has eliminated all administrative assistant positions throughout the organization and has no

intention of reinstating those positions. Moreover, the language of Section 6.0 of Article II states:

Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same Appropriate Unit on the date the election commences. EERP, Art. II, section 6.0(B) (emphasis added).

Even had Ms. Bauer been temporarily laid off, she did not work in the relevant pay period for reasons other than "illness, vacation or other authorized leave of absence." A permanent or temporary layoff is not "an authorized leave of absence." The language that Local 39 cites regarding temporarily laid-off employees is from an agreement among Local 39, City management and SMCS. The appellants here and the other employees in this bargaining unit are not parties to that agreement and are not bound by it. Accordingly, the City Council applies the language of the EERP, which does apply. Moreover, Ms. Bauer has applied for, and will likely receive, unemployment benefits – and apparently does not view herself as "employed by the City" as the EERP requires. For all these reasons, the Council determines Ms. Bauer was and is ineligible to vote whether to decertify Local 39 as the exclusive recognized employee organization for this unit.

- D. As to Local 39's argument that the Council ought to disregard the affidavit provided by the appellants demonstrating that 7 current employees voted against Local 39's continued representation of this unit, the Council accepts its claims in part. While the Council considers the affidavit as evidence that the September 19<sup>th</sup> election was flawed and that a new election should be held, it does not accept that affidavit as a substitute for a secret-ballot election.
- E. Lastly, Local 39 complains that the City agreed to bear the entire cost of the decertification election rather than insist Local 39 pay half suggesting this concession by City management staff is evidence that the City lacks impartiality in this matter. However, the Council finds that Local 39 flatly refused to pay its share of the election costs, forcing City management to fund the election solely or to fail to provide the election to which the petitioners were entitled. Nor did Local 39 object to the City's payment of the cost of the election prior to the filing of this appeal. Accordingly, that action does not show partiality on the City's part nor could an action of City management staff in which this Council did not participate impair the City Council's ability to impartially resolve a dispute among its employees in which neither City management nor the City Council has any stake.



**SECTION 4.** Pursuant to Article II, Section 10.0 of the EERP and the authority of the City Council to consider appeals submitted to it thereunder and on the basis of the findings stated in this resolution and the evidence in the record of its October 10, 2011 hearing, the City Council hereby GRANTS the appeal.

**SECTION 5.** A new election shall be promptly conducted to determine whether Office and Administrative Support Bargaining Unit employees desire to continue to be represented by Local 39 to be held on such terms and on such date as City management and Local 39 may agree and, failing such agreement, on such reasonable terms consistent with law and the EERP as the neutral agency conducting the election ("neutral agency") may establish.

**SECTION 6.** The City Council hereby orders that only those employees in the Office and Administrative Support Bargaining Unit who meet the eligibility criteria set out in Article II, Section 6.0(B) of the EERP may vote in the new election.

**SECTION 7.** The City Council hereby finds that Linda Bauer does not meet the eligibility criteria set out in Article II, Section 6.0(B) of the EERP and may not vote in the new election because her employment with the City was permanently terminated by lay off effective July 5, 2011 and she has applied for unemployment benefits, affirming she is not employed by the City. Any right she may have to be recalled to employment with the City does not affect her eligibility to vote unless and until she is actually reemployed.

**SECTION 8.** Pursuant to Section 10.0(C) of Article II of the EERP, this decision is final and binding. The City hereby provides notice that the time within which judicial review of this decision must be sought is governed by section 1094.6 of the California Code of Civil Procedure.

**SECTION 9.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions. The Employee Relations Officer shall provide a copy of this Resolution to the proponents and Local 39 by personal delivery or U.S. Mail, certified, with return receipt requested and shall implement it.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of OCTOBER 2011.

\_\_\_\_\_  
William Kirby, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael G. Colantuono, City Attorney

DRAFT

I, Joseph G.R. Labrie, City Clerk of the City of Auburn hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on October 10, 2011, by the following vote on roll call:

Ayes:

Noes:

Absent:

Abstain:

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Joseph G.R. Labrie, City Clerk

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RESOLUTION NO. 10-83

RESOLUTION REPEALING CITY OF AUBURN RESOLUTION NO. 90-176 AND  
INTRODUCING A REVISED EMPLOYER-EMPLOYEE RELATIONS POLICY

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WHEREAS, the Meyers-Milias-Brown Act requires the City to adopt and maintain local regulations regarding the formation of bargaining units to represent its employees and regarding related matters; and

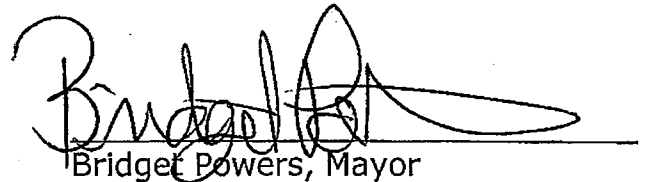
WHEREAS, the City's existing Employer-Employee Relations Resolution adopted pursuant to the Act is outdated and ill-suited to the needs of the City; and

WHEREAS, the City has prepared an updated Employer-Employee Relations Resolution and consulted with its bargaining units regarding it;

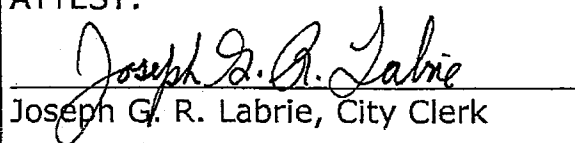
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN DOES  
HEREBY RESOLVE:

That the City Council does hereby repeal City of Auburn Resolution No. 90-176 in its entirety and adopt a revised Employer-Employee Relations Resolution attached herein provided, however, that Resolution No. 90-176 shall continue to govern any recognition proceeding or other effort to alter a bargaining unit for which a complete petition was filed before July 12, 2010.

DATED: July 12, 2010

  
Bridget Powers, Mayor

ATTEST:

  
Joseph G. R. Labrie, City Clerk

City of  
**Auburn**

**EMPLOYER-EMPLOYEE  
RELATIONS POLICY**

**ADOPTED BY THE  
AUBURN CITY COUNCIL**

**July 12, 2010**

**Resolution No. \_\_\_\_\_**

# TABLE OF CONTENTS

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION .....	1
ARTICLE I - GENERAL PROVISIONS .....	1
SECTION 1.0 Statement of Purpose.....	1
SECTION 2.0 Definitions .....	2
ARTICLE II - REPRESENTATION PROCEEDINGS.....	4
SECTION 3.0 Filing of Recognition Petition by Employee Organization .....	4
SECTION 4.0 City Response to Recognition Petition.....	5
SECTION 5.0 Open Period for Filing Challenging Petition.....	5
SECTION 6.0 Election Procedure .....	6
SECTION 7.0 Procedure for Decertification of Exclusively Recognized Employee Organization ....	6
SECTION 8.0 Policy and Standards for Determination of Appropriate Units .....	8
SECTION 9.0 Request for Modification of Established Appropriate Units.....	8
SECTION 10.0 Appeals.....	9
ARTICLE III - ADMINISTRATION .....	9
SECTION 11.0 Submission of Current Information by Recognized Employee Organizations .....	9
SECTION 12.0 Payroll Deductions on Behalf of Employee Organizations.....	10
SECTION 13.0 Employee Organization Activities -- Use of City Resources.....	11
SECTION 14.0 Availability of Data .....	11
SECTION 15.0 Administrative Rules and Procedure.....	12
SECTION 16.0 Memoranda of Understanding.....	12
ARTICLE IV - IMPASSE PROCEDURES .....	12
SECTION 17.0 Initiation of Impasse.....	12
SECTION 18.0 Resolution of Impasse .....	12
ARTICLE V - MISCELLANEOUS PROVISIONS .....	13
SECTION 19.0 Construction .....	13
SECTION 20.0 Amendment .....	13
SECTION 21.0 Severability.....	13

1. Matters within the scope of representation prior to the adoption by the City of its final budget for the ensuing year; and

2. What will be recommended to the City Council on matters within the decision-making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

## **ARTICLE II - REPRESENTATION PROCEEDINGS**

### **SECTION 3.0 Filing of Recognition Petition by Employee Organization**

An Employee Organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an Appropriate Unit shall file a petition with the Employee Relations Officer containing the following:

- A. Name and address of the Employee Organization.
- B. Names and titles of its officers.
- C. Names of representatives who are authorized to speak on behalf of the organization.
- D. A statement that the Employee Organization has, as one of its primary purposes, representing employees in their employment relations with the City.
- E. A statement whether the Employee Organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- F. Certified copies of the Employee Organization's constitution and bylaws, if any.
- G. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the Employee Organization for any purpose.
- H. A statement that the Employee Organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability or other restriction prohibited by law.
- I. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- J. A statement that the Employee Organization has in its possession Proof of Employee Support to establish that thirty percent (30%) of the employees in the Unit claimed to be appropriate have designated the Employee Organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer.

- K. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate.
- L. The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty under the law of the State of California, by the duly authorized officer(s) of the Employee Organization executing it.

#### **SECTION 4.0 City Response to Recognition Petition**

Upon receipt of a Petition, the Employee Relations Officer shall determine whether:

- A. There has been compliance with the requirements of these Rules regarding the recognition petition, and
- B. The unit claimed to be appropriate is an Appropriate Unit in accordance with Sec. 8 of this Article II.

If the Employee Relations Officer determines these two conditions are met, he/she shall so inform the petitioning Employee Organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If the Employee Relations Officer determines that either of the foregoing conditions is not met, he/she shall offer to consult with the petitioning Employee Organization regarding his/her determination and, if such determination remains unchanged after such consultation, he/she shall inform that organization in writing of the reasons for his/her determination. The petitioning Employee Organization may appeal such determination in accordance with Sec. 10 of this Article II.

#### **SECTION 5.0 Open Period for Filing Challenging Petition**

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other Employee Organization may file a competing request to be formally acknowledged as the exclusively recognized Employee Organization of the employees in the same or in an Overlapping Unit, by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Sec. 3 of this Article II. If such a challenging petition seeks establishment of an Overlapping Unit, the Employee Relations Officer shall call for a hearing on the competing petitions for the purpose of ascertaining the Appropriate Unit, at which time the petitioning Employee Organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the Appropriate Unit or Appropriate Units pursuant to Sec. 8 of this Article II and give notice to the petitioning Employee Organizations of that determination. The petitioning Employee Organizations shall have fifteen (15) days from the date of receipt of that notice to amend their petitions to conform to that determination or to appeal that determination pursuant to Sec. 10 of this Article II.



## **SECTION 6.0 Election Procedure**

- A. The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned Employee Organization(s), in accordance with this Resolution. In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service. All Employee Organizations which have submitted petitions determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also offer employees the choice of representing themselves individually in their employment relations with the City under the label "no exclusive bargaining agent" or some other label determined by the party conducting the election. Any costs of conducting elections shall be borne in equal shares by the City and by each Employee Organization appearing on the ballot.
- B. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same Appropriate Unit on the date the election commences.
- C. An Employee Organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated Appropriate Unit following an election or run-off election if it received a majority of all valid votes cast in the election. In an election involving three or more choices in which none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.
- D. There shall be no more than one valid election in a 12-month period affecting the same Appropriate Unit except in the case of a run-off as described in paragraph C. above.

## **SECTION 7.0 Procedure for Decertification of Exclusively Recognized Employee Organization**

- A. A decertification petition alleging that an Exclusively Recognized Employee Organization no longer represents a majority of the employees in an Appropriate Unit may be filed with the Employee Relations Officer.
- B. A decertification petition may be filed by two or more employees or their representative, or an Employee Organization, and shall contain the following declared to be true, correct and complete by the duly authorized signatory under penalty of perjury under the laws of the State of California:
1. The name, address and telephone number of the petitioner and not more than two designated representatives authorized to receive notices or requests for further information.

2. The name of the Appropriate Unit and of the Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.
3. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the Appropriate Unit, and any other relevant and material facts relating thereto.
4. Proof of Employee Support that at least thirty (30) percent of the employees in the Appropriate Unit no longer desire to be represented by the Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon, disinterested third party.

C. An Employee Organization may, in satisfaction of the decertification petition requirements hereunder, file a petition under this section in the form of a recognition petition that evidences Proof of Employee Support of at least thirty (30) percent of the employees in the Appropriate Unit that includes the allegation and information required under paragraph B.3 of this Section 7, and otherwise conforms to the requirements of Section 3 of this Article II.

D. The Employee Relations Officer shall determine whether a petition complies with this Article II. If the Employee Relations Officer determines that a petition does not comply with this Article II, he/she shall offer to consult with the representative(s) of the petitioning employees or Employee Organization and, if his/her determination remains unchanged after that consultation, the Employee Relations Officer shall return the petition to the employees or Employee Organization with a written statement of the reasons for doing so. The petitioning employees or Employee Organization may appeal such a determination pursuant to Sec. 10 of this Article II. If the Employee Relations Officer determines a petition complies with this Article II or his/her contrary determination is reversed on appeal, he/she shall give written notice of that fact to the Exclusively Recognized Employee Organization, to unit employees and to the petitioner(s).

E. The Employee Relations Officer shall arrange for a secret-ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to decertification and, if a recognition petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Sec. 6 of this Article II.

F. When he has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, the Employee Relations Officer may on his/her own initiative give notice to that Exclusively Recognized Employee Organization and to all employees in the Appropriate Unit that he will arrange for an election to determine the issue. Within fifteen (15) days of such notice, any other Employee Organization may file a recognition petition in accordance with this Sec. 7, which the Employee Relations Officer shall act on in accordance with this Sec. 7.

G. If, pursuant to this Sec. 7, a different Employee Organization is acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

## **SECTION 8.0 Policy and Standards for Determination of Appropriate Units**

A. The Employee Relations Officer shall have the management discretion to form and define reasonable bargaining units, and to modify bargaining units based on the procedures specified in this resolution. The Employee Relations Officer may consider, but shall not be bound by, labor relations criteria considered under federal authorities such as the National Labor Relations Act. A key criterion for unit determination is whatever grouping provides the broadest feasible grouping of positions that share an identifiable community of interest. In addition, the Employee Relations Officer may consider, but is not limited to, the following criteria:

1. Similarity of general kinds of work performed, qualifications required, and general working conditions.
2. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
3. Consistency with the organizational patterns of the City.
4. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
5. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

B. Notwithstanding the foregoing provisions of this section, positions occupied by Management, Supervisory and Confidential Employees may only be included in a unit consisting solely of Management, Supervisory or Confidential employees respectively. Management, Supervisory and Confidential Employees may not represent any Employee Organization which represents employees who are not Management, Supervisor or Confidential Employees. Professional Employees shall not be denied the right to be represented separately from nonprofessional employees.

C. The Employee Relations Officer shall, after notice to and consultation with affected Employee Organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from previously designated Appropriate Units in accordance with the provisions of this section.

## **SECTION 9.0 Request for Modification of Established Appropriate Units**

A. Requests by Employee Organizations for modifications of established Appropriate Units shall be considered by the Employee Relations Officer. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Sec. 3 of this Article II, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 8 hereof. The

Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

B. The Employee Relations Officer may on his/her own motion propose that an established Appropriate Unit be modified.

C. The Employee Relations Officer shall give written notice of proposed modifications(s) to any affected Employee Organization and shall hold a meeting concerning the proposed modification(s), at which time all affected Employee Organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Sec. 8 of this Article II, and shall give written notice of such determination to the affected Employee Organizations.

D. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this Article II. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, Employee Organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new Appropriate Unit or Units pursuant to Sec. 3 of this Article II.

#### **SECTION 10.0 Appeals**

A. An Employee Organization aggrieved by an Appropriate Unit determination of the Employee Relations Officer may request mediation through the California State Mediation and Conciliation Service within ten (10) days of notice of the unit determination.

B. Alternatively, within fifteen (15) days of notice of such a determination, determinations by the Employee Relations Officer concerning: (a) the designation or modification of an appropriate unit; (b) recognition petitions; or (c) decertification petitions may be appealed to the City Council for final decision.

C. Appeals to the City Council shall be filed in writing with the City Clerk, and a copy shall be served on the Employee Relations Officer. The City Council shall commence consideration of the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party for hearing, hear the matter itself, or approve such other procedure it deems appropriate to determine the facts and make a final decision. Any decision of the City Council on the use of such procedure, and any decision of the City Council determining the substance of a dispute, shall be final and binding. The failure of any party to file a timely appeal within the time limits specified herein shall constitute a waiver of the right to pursue such appeal.

### **ARTICLE III - ADMINISTRATION**

#### **SECTION 11.0 Submission of Current Information by Recognized Employee Organizations**

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items (a.) through (h.) of its Recognition Petition under Sec. 3 of this Article

**MEMORANDUM OF AGREEMENT FOR DECERTIFICATION ELECTION  
TO BE CONDUCTED THROUGH THE UNITED STATES MAIL**

The City of Auburn hereinafter called the "**Employer**" and, International Union of Operating Engineers Local 39, hereinafter called the "**Employee Organization(s)**", hereby agree as follows:

**1. DECERTIFICATION ELECTION:** An election by secret ballot shall be conducted by mail among the employees in the Unit described below to determine whether the employees desire to continue to be represented by the current Employee Organization or no organization(s). The election shall be conducted under the supervision of an impartial **Election Supervisor** from the **California State Mediation and Conciliation Service (Service)**.

**2. THE UNIT:** Office and Administrative Support Bargaining Group

**EXCLUDED:** All others.

**3. ELIGIBLE VOTERS:** All employees in the classification(s) within the Unit described above who were employed during the payroll period ending July 31, 2011, who are named on an **Eligibility List** agreed to by the parties, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. There may be no additions to or deletions from this addendum without the signed authorization of each of the parties to this agreement or their authorized representatives.

**4. THE BALLOT:** The secret ballot shall include the question:

**Do you wish to continue to be represented by  
International Union of Operating Engineers Local 39 (IUOE Local 39),  
or by No Organization?**

The ballot shall contain two squares, one for each of the above choices. The employee voting shall mark the square of his/her choice. There shall be no names signed, or otherwise recorded on the ballot.

**5. NOTICE OF ELECTION:** The Election Supervisor shall prepare a suitable Notice of Election. This Notice of Election shall be posted in a conspicuous place on the premises of the Employer prior to the election and is not intended to supersede or replace the original employer notice provided to applicable parties on August 15, 2011. An Affidavit of Posting will be required.

**6. SENDING AND RECEIPT OF MAIL BALLOTS:** A voter's packet will be mailed to each eligible voter no later than August 31, 2011. Any person who believes that they are eligible to vote in this election and has not received a voter's packet by September 2, 2011, may contact the State Mediation and Conciliation Service at 510-873-6465 during normal business hours and a packet will be mailed to that person. No requests for a packet will be accepted after 4:00 p.m. on September 7, 2011. Any questions of eligibility or duplication will be determined by the challenged vote procedure set forth below prior to the opening of any of the envelopes containing the returned secret ballots. The returned ballots must be received by the State Mediation and Conciliation Service no later than 5:00 p.m. on September 16, 2011. Ballots will be counted on;

September 19, 2011  
10 a.m.

Auburn City Hall  
1225 Lincoln Way  
Auburn, CA 95603

All Interested persons may attend.

**7. OBSERVERS:** Each party hereto may appoint one authorized observer and as many tellers as determined appropriate by the Election Supervisor, at the location where ballots are to be counted. Under the direction of the Election Supervisor the Observers may act as checkers and watchers, may challenge ballots and may otherwise assist the Election Supervisor. The names of observers shall be provided to the Election Supervisor by the parties. Failure to appoint an observer or failure of an observer to appear shall be deemed a waiver of the right to station such observer and shall not void the conduct or the results of balloting.

**8. CHALLENGED VOTES:** Authorized observers may only challenge the eligibility of a voter prior to the opening of the envelope containing that voter's ballot. It shall be the duty of the Election Supervisor to determine the eligibility of the voter prior to the opening of the ballot envelopes and either count or reject said ballot based on the eligibility list as provided for herein or any other relevant information as determined

by the Election Supervisor. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on all parties.

**9. DUTIES OF ELECTION SUPERVISOR:** The Election Supervisor shall prepare and cause to be mailed a voter's packet to each eligible voter at their latest known address taken from a list prepared by the employer. On the date designated for the counting of the ballots and after all challenges, if any, have been determined in accordance with Paragraph 8, the Election Supervisor, in the presence of the Observers, if any, shall supervise the count of the votes cast. This count shall be reduced to written form and witnessed in writing by the Observer(s), signifying that they have witnessed the counting of ballots.

**10. SECRET BALLOT:** The Election will be by secret ballot. The voter's packet sent to each eligible voter will contain: 1) Mail Ballot Instructions, 2) Official Secret Ballot; 3) A small envelope marked "SECRET BALLOT"; and 4) A return stamped envelope addressed to the "State Mediation and Conciliation Service."

**11. BINDING RESULTS:** A majority of the valid ballots cast will determine the results of the election. The results of the election shall become final and binding on both parties ten (10) days after certification of the election.

**12 CONFIDENTIALITY:** The Parties agree that the ballots, ballot envelopes and other election materials are confidential and will not be released by the Service after the election.

For the Employer

Date: 9-19-2011 ANDY HEATH  
CITY OF AUGUSTIN

For the Employee Organization

Date: 9-19-11 Chuck Thiel  
IUE Local 39

SMCS Case No. 11 -1-144

City of **Auburn**

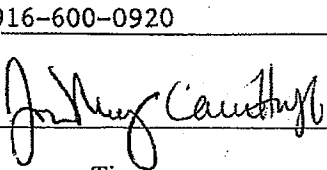
1225 Lincoln Way, Auburn CA 95603 • FAX (530) 885-5508  
www.auburn.ca.gov

**APPEAL APPLICATION**

(PLEASE PRINT)

Please check one of the following:

- ☐ Administrative Citation (Preliminary Review), Chapter 10.92, appeal shall be made within 10 days of the citation.
- ☐ Administrative Citation (Request for Hearing), Chapter 10.93, appeal shall be made within 30 days of the citation.
- ☐ Request to Abate Nuisance, Chapter 95.32
- ☐ Notice of Intent to Abate Vehicle, Chapter 90.10
- ☒ Appeal of Decertification vote in accordance with Article II, Section 10 of the adopted Employer-Employee Relations Policy.

Applicant Name: Jon May, Carie Huff, Lance E. Lowe, Russell KochMailing Address: 2721 Echo Way, Sacramento CA 95821Address in Question: N/APhone: 916-600-0920Applicant Signature: Date: 9-28-2011Time: 

STATEMENT OF FACTS

See Attached

Received

SEP 28 2011

by 

AMY M. LIND  
 DEPUTY CITY CLERK  
 CITY OF AUBURN

September 28, 2011

**RE: APPEAL OF DECERTIFICATION VOTE IN ACCORDANCE WITH ARTICLE II SECTION 10 OF THE ADOPTED EMPLOYER-EMPLOYEE RELATIONS POLICY**

Dear City of Auburn Council Members:

We, the undersigned members representing 7 employees of the Local 39 *Office and Administrative Support Bargaining Unit*, hereby appeal the results of the Decertification Election (SMCS case #11-1-44) held on September 19, 2011 and request a final decision by the City Council in accordance with Article II Section 10 of the adopted *Employer-Employee Relations Policy*.

According to the Official Decertification Vote, there were 14 votes cast resulting in 7 votes for representation by Local 39 and 7 votes for "No Representation".

Based upon the aforementioned vote results, it is the undersigned member's position that the decertification vote contained a vote from an ineligible participant. Specifically, Linda Bauer's vote should not have been counted considering that her last day of employment was July 5, 2011, according to City records.

The facts supporting our appeal, for City Council consideration, are several:

First, the Notice of Secret Ballot Election (**Attachment 1**), posted by The State Mediation and Conciliation Service, stated there is only one criteria to be an eligible voter. That stated criteria is:

"All employees employed in the Unit as of the payroll period ending on or about July 31, 2011 and as per the agreed upon list."

Secondly, in accordance with the signed MOU regarding the vote between the City of Auburn and Local 39 (**Attachment 2**), the voter eligibility requirement is:

"All employees in the classification(s) within the Unit described above who were employed during the payroll period ending July 31, 2011, who are named on an Eligibility List agreed to by the parties, and still employed on the date they cast their ballots in the election..."

Thirdly, the City of Auburn's Employer-Employee Relations Policy (**Attachment 3**), Article II Section 6.0 (B) states:

"Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences..."



Nothing in the attached documents references allowing former employees, who do not meet the stated above requirements, to vote.

Accordingly, as of the pay period ending July 31, 2011 there were 13 employees in the *Office and Administrative Support Bargaining Group*. There were 13 employees who met the criteria described by the *State Mediation and Conciliation Service Notice of Vote*, the signed *MOU*, and the *Employer-Employee Relations Policy*. **However, there were 14 votes cast and counted in the election.**

In conclusion, we the undersigned, maintain that there were 13 eligible voters in the above named election. Due to the fact that 7 votes were cast for "No representation" and based upon the above, it is our position that we decidedly won the election (Signatures of all 7 employees available upon request).

We therefore formally appeal the Decertification Vote results, and respectfully request the City Council to make a final decision to remedy this grievance in accordance with Article II, Section 10 of the *Employee-Employee Relations Policy*.

We thank you for your time and consideration in hearing our request.

Sincerely-

Jon May

Carie Huff

Lance E. Lowe

Russell Koch

Cc: Employee Relations Officer  
File

# ATTACHMENTS



## Attachment 1

### NOTICE OF SECRET BALLOT ELECTION TO BE CONDUCTED THROUGH THE US MAIL

THIS IS THE ONLY OFFICIAL NOTICE  
OF THIS SECRET BALLOT ELECTION

THIS NOTICE SUPERSEDES AND REPLACES ALL PREVIOUSLY POSTED  
SMCS ELECTION NOTICES

#### PURPOSE OF ELECTION

An election by Mail Ballot will be conducted, under the supervision of the California State Mediation/Conciliation Service among the eligible voters of the Office and Administrative Support Bargaining Group to determine the following:

Do you wish to continue to be represented by  
International Union of Operating Engineers Local 39 (IUOE Local 39),  
or by No Organization?

#### ELIGIBLE VOTERS

All employees employed in the Unit as of the payroll period ending on or about July 31, 2011 and as per the agreed upon list.

#### PROCEDURES FOR ELECTION

This election will be conducted by mailed secret ballot and ballots shall be returned to the address provided on an outer return envelope.

By August 31, 2011, the Election Supervisor will cause to be mailed to each eligible voter a ballot kit including voting instructions, a ballot, a secret ballot envelope, and a stamped return envelope.

Ballots NOT received through mail by September 16, 2011, and return envelopes which have had the identification number defaced or deleted will not be counted.

#### ABSENCES FROM PLACE OF EMPLOYMENT

Any eligible voter who, for reasons of absence from his/her permanent mailing address during the time period of August 31, 2011 through September 7, 2011, and who will not receive mail deliveries, may personally obtain his/her ballot kit by requesting same from the State Mediation/Conciliation Service 1515 Clay Street, Suite 2206, Oakland, CA 94612, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, but no later than 4:00 p.m. on September 7, 2011. The voter is then responsible for returning his/her ballot in accordance with the above paragraphs.

#### FAILURE TO RECEIVE BALLOT KIT AND REPLACEMENT BALLOTS

If an eligible voter fails to receive his/her mailed ballot kit by September 7, 2011, the eligible voter may secure a new ballot kit by requesting same from the State Mediation/Conciliation Service 1515 Clay Street, Suite 2206, Oakland, CA 94612, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, but no later than 4:00 p.m. on September 7, 2011. The voter is then responsible for returning his/her ballot in accordance with the above paragraphs.

#### DEFACED, DESTROYED OR LOST BALLOTS

The same procedures as described in the above paragraphs will be utilized should an eligible voter who has received his/her ballot kit by U.S. Mail inadvertently deface, destroy or lose his/her ballot or ballot return envelope.

#### COUNTING OF BALLOTS:

10AM - September 19, 2011

Auburn City Hall  
1225 Lincoln Way  
Auburn, CA 95603

All interested persons may attend.

If you have any questions regarding this election, please contact:

Kenneth Glenn, Mediator  
510-873-6465  
Email: [kglenn@dir.ca.gov](mailto:kglenn@dir.ca.gov)

If you phone, ask the office administrator to forward your call directly to Kenneth Glenn

California State Mediation/Conciliation Service

SMCS Case No. 11-1-144

DEPARTMENT OF INDUSTRIAL RELATIONS  
State Mediation and Conciliation Service  
1515 Clay St., Suite 2206  
Oakland, CA 94612  
Tel: (510) 873-6465 Fax: (510) 873-6475

## Attachment 2



### MEMORANDUM OF AGREEMENT FOR DECERTIFICATION ELECTION TO BE CONDUCTED THROUGH THE UNITED STATES MAIL

The City of Auburn hereinafter called the "Employer" and, International Union of Operating Engineers Local 39, hereinafter called the "Employee Organization(s)", hereby agree as follows:

1. **DECERTIFICATION ELECTION:** An election by secret ballot shall be conducted by mail among the employees in the Unit described below to determine whether the employees desire to continue to be represented by the current Employee Organization or no organization(s). The election shall be conducted under the supervision of an impartial Election Supervisor from the California State Mediation and Conciliation Service (Service).

2. **THE UNIT:** Office and Administrative Support Bargaining Group

**EXCLUDED:** All others.

3. **ELIGIBLE VOTERS:** All employees in the classification(s) within the Unit described above who were employed during the payroll period ending July 31, 2011, who are named on an Eligibility List agreed to by the parties, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. There may be no additions to or deletions from this addendum without the signed authorization of each of the parties to this agreement or their authorized representatives.

4. **THE BALLOT:** The secret ballot shall include the question:

Do you wish to continue to be represented by  
International Union of Operating Engineers Local 39 (IUOE Local 39),  
or by No Organization?

The ballot shall contain two squares, one for each of the above choices. The employee voting shall mark the square of his/her choice. There shall be no names signed, or otherwise recorded on the ballot.

5. **NOTICE OF ELECTION:** The Election Supervisor shall prepare a suitable Notice of Election. This Notice of Election shall be posted in a conspicuous place on the premises of the Employer prior to the election and is not intended to supersede or replace the original employer notice provided to applicable parties on August 15, 2011. An Affidavit of Posting will be required.

6. **SENDING AND RECEIPT OF MAIL BALLOTS:** A voter's packet will be mailed to each eligible voter no later than August 31, 2011. Any person who believes that they are eligible to vote in this election and has not received a voter's packet by September 2, 2011, may contact the State Mediation and Conciliation Service at 510-873-6465 during normal business hours and a packet will be mailed to that person. No requests for a packet will be accepted after 4:00 p.m. on September 7, 2011. Any questions of eligibility or duplication will be determined by the challenged vote procedure set forth below prior to the opening of any of the envelopes containing the returned secret ballots. The returned ballots must be received by the State Mediation and Conciliation Service no later than 5:00 p.m. on September 16, 2011. Ballots will be counted on;

September 19, 2011.  
10 a.m.

Auburn City Hall  
1225 Lincoln Way  
Auburn, CA 95603

All Interested persons may attend.

7. **OBSERVERS:** Each party hereto may appoint one authorized observer and as many tellers as determined appropriate by the Election Supervisor, at the location where ballots are to be counted. Under the direction of the Election Supervisor the Observers may act as checkers and watchers, may challenge ballots and may otherwise assist the Election Supervisor. The names of observers shall be provided to the Election Supervisor by the parties. Failure to appoint an observer or failure of an observer to appear shall be deemed a waiver of the right to station such observer and shall not void the conduct or the results of balloting.

8. **CHALLENGED VOTES:** Authorized observers may only challenge the eligibility of a voter prior to the opening of the envelope containing that voter's ballot. It shall be the duty of the Election Supervisor to determine the eligibility of the voter prior to the opening of the ballot envelopes and either count or reject said ballot based on the eligibility list as provided for herein or any other relevant information as determined

## Attachment 2

by the Election Supervisor. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on all parties.

**9. DUTIES OF ELECTION SUPERVISOR:** The Election Supervisor shall prepare and cause to be mailed a voter's packet to each eligible voter at their latest known address taken from a list prepared by the employer. On the date designated for the counting of the ballots and after all challenges, if any, have been determined in accordance with Paragraph 8, the Election Supervisor, in the presence of the Observers, if any, shall supervise the count of the votes cast. This count shall be reduced to written form and witnessed in writing by the Observer(s), signifying that they have witnessed the counting of ballots.

**10. SECRET BALLOT:** The Election will be by secret ballot. The voter's packet sent to each eligible voter will contain: 1) Mail Ballot Instructions, 2) Official Secret Ballot; 3) A small envelope marked "SECRET BALLOT"; and 4) A return stamped envelope addressed to the "State Mediation and Conciliation Service."

**11. BINDING RESULTS:** A majority of the valid ballots cast will determine the results of the election. The results of the election shall become final and binding on both parties ten (10) days after certification of the election.

**12 CONFIDENTIALITY:** The Parties agree that the ballots, ballot envelopes and other election materials are confidential and will not be released by the Service after the election.

For the Employer

Date: 9-19-2011 ANDY HEATH  
CITY OF AUGUSTA

For the Employee Organization

Date: 9-19-11 Chuck Thiel CHORSE  
IUOE Local 39

SMCS Case No. 11 -1-144

## Attachment 3

### SECTION 6.0 Election Procedure

- A. The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned Employee Organization(s), in accordance with this Resolution. In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service. All Employee Organizations which have submitted petitions determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also offer employees the choice of representing themselves individually in their employment relations with the City under the label "no exclusive bargaining agent" or some other label determined by the party conducting the election. Any costs of conducting elections shall be borne in equal shares by the City and by each Employee Organization appearing on the ballot.
- B. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same Appropriate Unit on the date the election commences.
- C. An Employee Organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated Appropriate Unit following an election or run-off election if it received a majority of all valid votes cast in the election. In an election involving three or more choices in which none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.
- D. There shall be no more than one valid election in a 12-month period affecting the same Appropriate Unit except in the case of a run-off as described in paragraph C. above.

### SECTION 7.0 Procedure for Decertification of Exclusively Recognized Employee Organization

- A. A decertification petition alleging that an Exclusively Recognized Employee Organization no longer represents a majority of the employees in an Appropriate Unit may be filed with the Employee Relations Officer.
- B. A decertification petition may be filed by two or more employees or their representative, or an Employee Organization, and shall contain the following declared to be true, correct and complete by the duly authorized signatory under penalty of perjury under the laws of the State of California:
1. The name, address and telephone number of the petitioner and not more than two designated representatives authorized to receive notices or requests for further information.

1225 Lincoln Way, Auburn, CA 95603 • (530)823-4211 • FAX (530)885-5508  
www.auburn.ca.gov

October 5, 2011

**By Email and U.S. Mail - Certified, Return Receipt Requested**

Chuck Thiel, Business Representative  
Stationary Engineers, Local 39  
International Union of Operating Engineers  
3272 Fortune Court, Auburn, CA 95603

Jon May, Petitioner  
Carie Huff, Petitioner  
Lance Lowe, Petitioner  
Russell Koch, Petitioner

RE: Exclusively Recognized Employee Organization for Office and Administrative Support Bargaining Unit

Colleagues:

Enclosed is an appeal filed September 28, 2011 by the proponents of the recent petition to decertify Local 39 as the exclusively recognized bargaining agent for the Office and Administrative Support Bargaining Unit. I have set this appeal for hearing before the City Council at its regularly scheduled meeting of Monday, October 10, 2011 at 6:00 p.m. in the City Council Chambers at City Hall, 1225 Lincoln Way, Auburn, CA.

If you wish to submit any written materials for the Council's consideration, please send them to my attention by 11:00 AM on Friday October 7, 2011 so the City Clerk's office can circulate them to the City Council and make them available to the public. You may also make your respective cases on this appeal orally at the hearing, as well.

I will prepare a staff report and recommended action on this appeal for the Council's consideration, which will be available on the City's website no later than Friday afternoon at [www.auburn.ca.gov](http://www.auburn.ca.gov) under the Committee Agendas & Minutes link and the City Council sublink. The outcome, of course, will be for the Council to determine after conducting the hearing.

Chuck Thiel, Business Representative, Local 39

Jon May, Carie Huff, Lance Lowe, Russell Koch, Petitioners

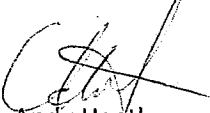
RE: Exclusively Recognized Employee Organization for Office and Administrative Support Bargaining Unit

October 5, 2011

Page 2 of 2

If I can provide further information to assist your participation in this appeal, please contact me at (530) 823-4211, extension 110.

Very truly yours,



Andy Heath

Administrative Services Director

Email: [Aheath@Auburn.ca.gov](mailto:Aheath@Auburn.ca.gov)

AH:mgc

cc: Bob Richardson, City Manager  
Michael G. Colantuono, City Attorney  
Patrick Clark, Labor Negotiator

Enclosure



October 4, 2011

[ ATTACHMENT E ]

**RE: RESULTS OF DECERTIFICATION VOTE HELD SEPTEMBER 19, 2011**

Dear City of Auburn Council Members:

We, the undersigned employees of the City of Auburn, representing a majority of the members of the *Office and Administrative Support Bargaining Unit*, hereby certify that we voted "No Representation" in the decertification election held on September 19<sup>th</sup>, 2011.

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Jon May*

*Jon May*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Carie Huff*

*Carie Huff*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Russell Koch*

*Russell Koch*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Sarah E Lacko*

*Sarah E Lacko*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Deborah Nelson*

*Deborah Nelson*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*Lance E. Lowe*

*Lance E. Lowe*

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

*July Holt*

*July Holt*

Cc: Employee Relations Officer  
File

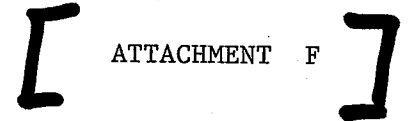
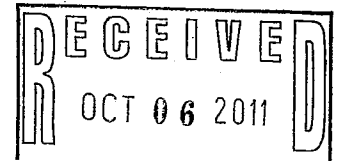


# Stationary Engineers, Local 39

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

**JERRY KALMAR**  
BUSINESS MANAGER-SECRETARY

October 6, 2011



Auburn City Council  
1225 Lincoln Way  
Auburn, CA 95603

## RE: RESPONSE TO APPEAL OF DECERTIFICATION ELECTION

Dear Members of the Auburn City Council

The appeal of the decertification election that has been submitted to you for determination, is procedurally improper and without merit. First of all, the Employer-Employee Relations Policy Article II, Section 10 is an unreasonable rule violating the Meyers-Milias Brown Act Government Code Section 3507, in as much the that the City Council is allowed to make the final determination on decertification elections. This rule is unreasonable because such decertification determinations should be free from employer interference.

Furthermore, Government Code Section 3507 (9) b states:

*Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.*

The decertification election officiated by the State Mediation and Conciliation Service determined that the moving party on the decertification petition failed to achieve a majority of support for the decertification of Stationary Engineers, Local 39 as the Exclusive Recognized Employee Organization.

The appellants assert that the laid off employee did not have the right to vote in the election. During the meeting, State Mediator Mr. Ken Glenn, from the State Mediation and Conciliation Service, declared that there was one challenged ballot from a laid off employee. That challenge of the ballot was raised by Mr. Glenn himself. During the discussion the City offered no challenge to the ballot in question and after some discussion it was determined that the Memorandum of Agreement for the Decertification Election, signed by both Administrative Services Director, Andy Heath and myself representing Stationary Engineers, Local 39, specifically allowed the inclusion of the challenged ballot in paragraph 3, which states:

**ELIGIBLE VOTERS:** *All employees in the classification(s) within the Unit described above who were employed during the payroll period ending July 31, 2011, who are*

*named on an Eligibility List agreed to by the parties, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, **temporarily laid off**, and employees who are in the military service of the United States shall be eligible to vote. There may be no additions to or deletions from this addendum without the signed authorization of each of the parties to this agreement or their authorized representatives.*

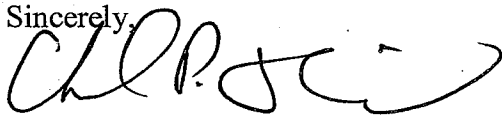
The laid off employee is currently on a re-employment list and is subject to recall. Until the re-employment list has expired the employee in question is only "temporarily laid off" and therefore her ballot was rightly included in the ballot count as agreed to in the Memorandum of Understanding (MOU). The appellants claim that "Nothing in the attached documents references allowing former employees, who do not meet the stated above requirements, to vote", is incorrect because the MOU specifically states, in paragraph 3, that temporarily laid off employees are specifically allowed to vote. The State Mediator agreed and ruled that the ballot was to be included in the ballot count.

The appellant claims that they have in their possession signatures of all 7 employees who voted for "No representation". Such claims should be disregarded as this decertification election was properly held by the State Mediation and Conciliation Service as a secret ballot election. To consider any such list of signatures after the fact is a violation of Article I, Section 6.0 of the Employer-Employee Relations Policy which requires a secret ballot election.

In closing, if the City Council grants the decertification based upon the appellants' assertions, the Council will be violating its own rules, and State law, leaving Local 39 no other option but to file an Unfair Labor Practice charge with the State Public Employee Relations Board. Be further informed that Local 39 will consider such conduct by the employer to be dominance and interference prohibited by statute. It is our belief that the employer has already aided and abetted the attempt to decertify Stationary Engineers, Local 39. This is partially evidenced by the City's action of offering to pay for the whole cost of the decertification election, a violation of the Employer-Employee Relations Policy Article II, Section 6. Stationary Engineers, Local 39 demands that the City cease and desist from any further actions contrary to the Employer-Employee Relations ordinance and State law, or all legal avenues of redress will be utilized.

Thank you for your careful consideration in this matter

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Thiel", with a stylized flourish at the end.

Chuck Thiel  
Business Representative

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